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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-820]

Fresh Tomatoes From Mexico: Intent to Terminate Suspension Agreement and Resume Antidumping Investigation and Intent to Terminate Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 2, 2013, the Department of Commerce (the Department) and Mexican tomato growers/exporters accounting for a significant percentage of all fresh tomatoes imported into the United States from Mexico initialed a draft agreement that would suspend a resumed antidumping investigation on fresh tomatoes from Mexico. Based on this draft agreement, and if an acceptable agreement is reached, we anticipate that the Mexican tomato growers/exporters will withdraw from the 2008 Agreement in order to enter into a new agreement. If the Mexican tomato growers/exporters withdraw from the 2008 Agreement, the Agreement will no longer cover substantially all imports of fresh tomatoes from Mexico. Accordingly, the Department of Commerce would terminate the suspension agreement and resume the antidumping investigation. In addition, in the event the Department terminates the suspension agreement and resumes the investigation, the Department intends to terminate the ongoing sunset review. Conclusion of a new agreement would result in suspension of the resumed investigation.

EFFECTIVE DATE: [INSERT DATE OF PUBLICATION]

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SUPPLEMENTAL INFORMATION:

Background

On April 18, 1996, the Department initiated an antidumping investigation to determine whether imports of fresh tomatoes from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV) (61 FR 18377, April 25, 1996). On May 16, 1996, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination.

On October 10, 1996, the Department and Mexican tomato growers/exporters initialed a proposed agreement to suspend the antidumping investigation. On October 28, 1996, the Department preliminarily determined that imports of fresh tomatoes from Mexico are being sold at LTFV in the United States. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Tomatoes from Mexico, 61 FR 56608 (November 1, 1996) (Preliminary Determination). On the same day on which the Department issued the Preliminary Determination, the Department and certain growers/exporters of fresh tomatoes from Mexico signed an agreement to suspend the investigation (1996 Suspension Agreement). See Suspension of Antidumping Investigation: Fresh Tomatoes from Mexico, 61 FR 56618 (November 1, 1996).

On May 31, 2002, Mexican tomato growers/exporters accounting for a significant percentage of all fresh tomatoes imported into the United States from Mexico provided written notice to the Department of their withdrawal from the 1996 Suspension Agreement, effective July 30, 2002. Because the 1996 Suspension Agreement would no longer cover substantially all

imports of fresh tomatoes from Mexico, effective July 30, 2002, the Department terminated the 1996 Suspension Agreement, terminated the sunset review of the suspended investigation, and resumed the antidumping investigation. See Notice of Termination of Suspension Agreement, Termination of Sunset Review, and Resumption of Antidumping Investigation: Fresh Tomatoes from Mexico, 67 FR 50858 (August 6, 2002).

On November 8, 2002, the Department and Mexican tomato growers/exporters initialed a proposed agreement suspending the resumed antidumping investigation on imports of fresh tomatoes from Mexico. On December 4, 2002, the Department and certain growers/exporters of fresh tomatoes from Mexico signed a new suspension agreement (2002 Suspension Agreement). See Suspension of Antidumping Investigation: Fresh Tomatoes From Mexico, 67 FR 77044 (December 16, 2002). On November 3, 2003, the Department published the Final Results of Analysis of Reference Prices and Clarifications and Corrections; Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes From Mexico, 68 FR 62281 (November 3, 2003).

On November 26, 2007, Mexican tomato growers/exporters accounting for a significant percentage of all fresh tomatoes imported into the United States from Mexico provided written notice to the Department of their withdrawal from the 2002 Suspension Agreement, effective 90 days from the date of their withdrawal letter (i.e., February 24, 2008), or earlier, at the Department's discretion.

On November 28, 2007, the Department and Mexican tomato growers/exporters initialed a new proposed agreement to suspend the antidumping investigation on imports of fresh tomatoes from Mexico. On December 3, 2007, the Department released the initialed agreement to interested parties and afforded them an opportunity to comment on the initialed agreement.

On December 17 and 18, 2007, several interested parties filed comments in support of the initialed agreement.

Because the 2002 Suspension Agreement would no longer cover substantially all imports of fresh tomatoes from Mexico, the Department published a notice of intent to terminate the 2002 Suspension Agreement, intent to terminate the five-year sunset review of the suspended investigation, and intent to resume the antidumping investigation. See Fresh Tomatoes from Mexico: Notice of Intent to Terminate Suspension Agreement, Intent to Terminate the Five-Year Sunset Review, and Intent to Resume Antidumping Investigation, 72 FR 70820 (December 13, 2007). On January 16, 2008, the Department published a notice of termination of the 2002 Suspension Agreement, termination the five-year sunset review of the suspended investigation, and resumption of the antidumping investigation, effective January 18, 2008. See Fresh Tomatoes from Mexico: Notice of Termination of Suspension Agreement, Termination of Five-Year Sunset Review, and Resumption of Antidumping Investigation, 73 FR 2887 (January 16, 2008).

On January 22, 2008, the Department signed a new suspension agreement (2008 Suspension Agreement) with certain growers/exporters of fresh tomatoes from Mexico. See Suspension of Antidumping Investigation: Fresh Tomatoes from Mexico, 73 FR 4831 (January 28, 2008).

On August 15, 2012, certain Mexican growers/exporters filed a letter with the Department requesting consultations under section IV.G. of the 2008 Suspension Agreement and the Department agreed to consult. As a result of these consultations, on February 2, 2013, the Department and Mexican tomato growers/exporters accounting for a significant percentage of all fresh tomatoes imported into the United States from Mexico initialed a draft agreement that

would suspend a resumed antidumping investigation on fresh tomatoes from Mexico.

Scope of the Investigation

The merchandise subject to the suspended investigation is all fresh or chilled tomatoes (fresh tomatoes) which have Mexico as their origin, except for those tomatoes which are for processing. For purposes of this suspended investigation, processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying, or the addition of chemical substances, or converting the tomato product into juices, sauces, or purees. Fresh tomatoes that are imported for cutting up, not further processing (e.g., tomatoes used in the preparation of fresh salsa or salad bars), are covered by this Agreement.

Commercially grown tomatoes, both for the fresh market and for processing, are classified as *Lycopersicon esculentum*. Important commercial varieties of fresh tomatoes include common round, cherry, grape, plum, greenhouse, and pear tomatoes, all of which are covered by this investigation.

Tomatoes imported from Mexico covered by this suspended investigation are classified under the following subheadings of the Harmonized Tariff Schedules of the United States (HTSUS), according to the season of importation: 0702 and 9906.07.01 through 9906.07.09. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of this suspended investigation is dispositive.

Intent to Terminate Suspension Agreement and Resume the Antidumping Investigation

Based on the initialed draft agreement, and if an acceptable agreement is reached, we anticipate that the Mexican tomato growers will withdraw from the 2008 Suspension Agreement. If the growers/exporters accounting for a significant percentage of exports of tomatoes to the United States withdraw from the 2008 Suspension Agreement, the 2008 Suspension Agreement

will no longer cover substantially all imports of fresh tomatoes from Mexico. Accordingly, the Department would terminate the 2008 Suspension Agreement and resume the antidumping investigation in accordance with section 734(i)(1)(B) of the Tariff Act of 1930, as amended (the Act). Pursuant to section 734(i)(1)(B) of the Act, the Department would resume the investigation as if it had published the affirmative preliminary determination under section 733(b) of the Act on the effective date of the termination. As explained in the Preliminary Determination (61 FR at 56609), the Department postponed the final determination until the 135th day after the date of the preliminary determination. The Department therefore would make its final determination in a resumed investigation within 135 days of termination of the 2008 Suspension Agreement, unless a new suspension agreement becomes effective. However, if the Department and substantially all of the growers/exporters of fresh tomatoes from Mexico sign a new suspension agreement, following the notice and comment period provided in accordance with section 734(c) of the Act, the resumed investigation would be suspended.

Intent To Terminate the Five-Year Sunset Review

On December 3, 2012, the Department initiated a five-year sunset review of the suspended antidumping investigation on fresh tomatoes from Mexico pursuant to section 751(c) of the Act. See Initiation of Five-Year (“Sunset”) Review, 77 FR 71684 (December 3, 2012).

If the Department terminates the 2008 Suspension Agreement, there will no longer be a suspended investigation of which to conduct a sunset review. Therefore, the Department would terminate the sunset review of the suspended antidumping investigation on fresh tomatoes from Mexico, effective on the date of termination of the 2008 Suspension Agreement.

International Trade Commission

The Department has notified the International Trade Commission (ITC) of its intent to

terminate the 2008 Suspension Agreement and resume the antidumping investigation. If the Department resumes the antidumping investigation, and if the Department makes a final affirmative determination in the investigation, the ITC is scheduled to make its final determination concerning injury within 45 days of publication of the Department's final determination. If both the Department's and the ITC's final determinations are affirmative, the Department will issue an antidumping duty order. However, as indicated above, if the Department and substantially all of the growers/exporters of fresh tomatoes from Mexico sign a new suspension agreement, following the notice and comment period provided in accordance with section 734(c) of the Act, the resumed investigation would be suspended.

Suspension of Liquidation

If the Department terminates the 2008 Suspension Agreement and resumes the antidumping investigation as described above, the Department will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of fresh tomatoes from Mexico that are entered, or withdrawn from warehouse, for consumption on or after the effective date of the termination of the 2008 Suspension Agreement. CBP shall require antidumping duty cash deposits or bonds for entries of the subject merchandise based on the preliminary dumping margins, which range from 4.16 to 188.45 percent. See Preliminary Determination, 61 FR at 56615.

Administrative Protective Order Access and Applicable Regulations

The following requirements will apply if and during such time as the investigation is resumed. Because of the significant changes made to the administrative protective order (APO) process since the investigation, the Department will issue a new APO for any resumed investigation that will supersede the previously issued firm-specific APOs. Those authorized

applicants that were granted APOs during the original investigation, as indicated in the most recent APO service list on the Department's website, will continue to have access to business proprietary information under APO. Any new APO applications or necessary amendments for changes in staff under the pre-existing APOs should be submitted promptly, and in accordance with the Department's regulations currently in effect. See section 777(c)(1) of the Act; 19 CFR 351.103, 351.304, 351.305 and 351.306.

In addition, because of the significant changes made to the Department's filing and certification requirements since the investigation, including electronic filing, the Department intends to apply its current regulations and practices with regard to filing and certification, should the antidumping investigation be resumed. See 19 CFR 351.303(b) and (g). However, with respect to the procedures for the conduct of any resumed investigation generally, including any possible suspension thereof, the Department's regulations in effect in 1996 shall govern. See 19 CFR 351.701; San Vicente Camalu SPR de Ri v. United States, 491 F.Supp.2d 1186 (CIT 2007).

This determination is issued and published in accordance with section 733(f) and 734(i) of the Act .

Dated: February 4, 2013.

Paul Piquado
Assistant Secretary for
Import Administration

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